



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket Number RUS-22-ELECTRIC-0001]

Announcement of Application Deadlines and Requirements for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2022

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the solicitation of applications under the Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes Program (the 313A Program) for Fiscal Year (FY) 2022. The agency has received \$750 million for this purpose in previous years and has a pro-rata share of that amount pursuant to the most recent continuing resolution. The final amount of funding shall be determined by Congressional appropriations. Should additional funding become available this fiscal year, RUS reserves the right to increase the total funds available under this notice. These types of loan guarantees will be made available to qualified applicants to make utility infrastructure loans or to refinance bonds or notes issued for such purposes. This notice is being issued in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2022. An

announcement will be made on the Agency Web site: <https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas> regarding any amount received in the FY 2022 appropriations. Successful applications will be selected by the Agency for funding and subsequently awarded. All applicants are responsible for any expenses incurred in developing their applications. The agency welcomes financially feasible proposals which would use funds available under this notice to further finance eligible utilities projects that demonstrably reduce carbon emissions.

DATES: Completed applications must be received or postmarked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Applicants intending to mail applications must have their applications postmarked by the closing deadline. The Agency will allow 60 days from the date of the postmark for delivery.

ADDRESSES: Applicants are required to submit one original and two copies of their loan application to the U.S. Department of Agriculture, Rural Utilities Service, Electric Program, ATTN: Amy McWilliams, Program Advisor, Electric Program, Rural Utilities Service, 1400 Independence Avenue, SW, Washington, DC 20250-1560 or via email at amy.mcwilliams@usda.gov.

FOR FURTHER INFORMATION CONTACT: Amy McWilliams, Program Advisor, Electric Program, Rural Utilities Service, 1400 Independence Avenue, SW, Washington, DC 20250-1560. Telephone: (202) 205-8663; fax: (844) 749-0736; or e-mail: amy.mcwilliams@usda.gov.

SUPPLEMENTARY INFORMATION:

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it will result in an annual effect on the economy of \$100,000,000 or more. Accordingly, there will be a mandatory 60-day delay in effectiveness to award loan guarantees. However, applications will be accepted for 60 days beginning [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] as stated in the DATES section of this NOSA.

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2022.

Announcement Type: Guarantees for Bonds and Notes.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.850.

Due Date for Applications: Completed applications must be received or postmarked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

The Agency encourages applicants to consider projects that will promote equity and economic opportunity in rural America, specifically those that advance key priorities (more details are available at <https://www.rd.usda.gov/priority-points>):

- Assisting rural communities recover economically from the impacts of the COVID-19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Items in Supplementary Information

I. Program Description.

II. Federal Award Information.

III. Eligibility Information.

IV. Fiscal Year 2022 Application and Submission Information.

V. Application Review Information.

VI. Issuance of Guarantee.

VII. Guarantee Agreement.

VIII. Federal Administration Information.

IX. National Environmental Policy Act Certification.

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XI. Agency Contacts.

XII. Non-discrimination Statement.

I. Program Description

A. Purpose and Objectives of the 313A Program.

The purpose of the 313A Program is to guarantee loans to selected applicants (each referred to as “Guaranteed Lender” in this NOSA). The proceeds of the guaranteed loans are to be used (i) to make utility infrastructure loans or (ii) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the Rural Electrification Act of 1936, as amended (RE Act). Each applicant must provide a statement on

how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3), or its equivalent in any subsequent regulation. Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant's use of lower cost loan funds provided by the Federal Financing Bank (FFB) and guaranteed by RUS.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOSA to be used to make broadband loans, or to refinance broadband loans made to a borrower that has received, or is eligible to receive, a broadband loan under Title VI of the RE Act.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds of guaranteed loans made under this NOSA to be used by the Guaranteed Lender to fund projects for the generation of electricity.

B. Statutory Authority.

The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c-1), and is implemented by regulations located at 7 CFR part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

C. Definition of Terms.

The definitions applicable to this NOSA are currently published at 7 CFR 1720.3, or its equivalent in any new regulation issued by RUS.

D. Application Awards.

RUS will review and evaluate applications received in response to this NOSA based on the regulations at 7 CFR 1720.7, and as provided in this NOSA.

II. Federal Award Information

Type of Awards: Guaranteed Loans.

Fiscal Year Funds: FY 2022.

Available Funds: The agency received authority to issue \$750 million in loan guarantees for this program in FY 2021 and has a pro-rata share of that amount for FY 2022 pursuant to the most recent continuing resolution. The final amount of funding for this program for FY 2022 will be determined by Congressional appropriations. Should additional funding become available this fiscal year, RUS reserves the right to increase the total funds available under this notice.

Award Amounts: RUS anticipates making multiple guarantees under this NOSA. The number, amount, and terms of awards under this NOSA will depend in part on the number of eligible applications and the amount of funds requested. In determining whether to make an award, RUS will take overall program policy objectives into account.

Due Date for Applications: Completed applications must be received or post marked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Award Date: Awards will be made on or before September 30, 2022, but no earlier than [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Performance Period: The Rural Electrification Act provides that loans guaranteed under this program cannot exceed 30 years in length.

Type of Assistance Instrument: The type of assistance is in the form of an RUS FFB Guaranteed Loan and is supported by a perfected lien on collateral sufficient to provide for full loan security.

Schedule of Loan Repayment: The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) in periodic installments of principal and interest, (ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

III. Eligibility Information

A. Eligible Applicants

1. *To be eligible to participate in the 313A Program, a Guaranteed Lender must be:*

- a. A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis;
- b. Able to demonstrate to the Administrator that it possesses the appropriate expertise, experience, and qualifications to make loans for utility infrastructure purposes (to the extent that the applicant intends to use the guaranteed loan funds for such purpose); and
- c. Able to demonstrate to the Administrator that it has bonds or notes eligible for refinancing under the 313A Program (to the extent that the applicant intends to use the guaranteed loan funds for such purpose).

2. *To be eligible to receive a guarantee, a Guaranteed Lender's bond must meet the following criteria:*

- a. The Guaranteed Lender must furnish the Administrator with a certified list of the principal balances of eligible loans outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, including any previously issued guaranteed bonds outstanding; and

b. The guaranteed bonds to be issued by the Guaranteed Lender would receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee.

3. A lending institution's status as an eligible applicant does not assure that the Administrator will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Administrator from declining to issue a guarantee.

B. Cost Sharing or Matching. There is no requirement for cost sharing or matching; however, borrowers must provide sufficient unencumbered collateral to secure loan guarantees made under this program.

C. Other Eligibility Requirements

Applications will only be accepted from lenders that serve rural areas defined in 7 CFR 1710.2(a) as (i) any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and (ii) any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901-950cc-2). For initial loans to a borrower made after June 18, 2008, the “rural” character of an area is determined at the time of the initial loan to furnish or improve service in the area. When a non-tribal applicant is proposing to use guaranteed loan funds made available through this program, for projects on tribal lands, the application must include a resolution of support from the Tribe or Tribes within the proposed service territory of the project.

IV. Fiscal Year 2022 Application and Submission Information

A. Address to Request Application Package

All applications must be prepared and submitted in accordance with this NOSA and

7 CFR part 1720 (available online at <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVII/part-1720>).

B. Content and Form of Application Submission

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

1. System for Awards Management.

All program applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Recipients of guaranteed loans under this program must maintain an active SAM registration with current information at all times during the time they have an outstanding guaranteed loan or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

2. Restrictions on Lobbying.

Applicants must comply with the requirements relating to restrictions on lobbying activities. (See 2 CFR part 418.) This form is available at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>.

3. Uniform Relocation Act assurance statement.

Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form is available at <https://www.rd.usda.gov/resources/directives/electric-sample-documents>.

4. Federal debt delinquency requirements

This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a)(13)). This form (the Federal Debt Delinquency Certification) is available at <https://www.rd.usda.gov/resources/directives/electric-sample-documents>.

5. Form RD 400-4, Assurance Agreement.

Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR parts 15 and 15b and 12 CFR part 202, 7 CFR 1901, Subpart E, DR4300-003, DR4330-0300, DR4330-005. This form is available at: <http://www.rd.usda.gov/resources/directives/electric-sample-documents>; and

6. Articles of Incorporation and Bylaws

See 7 CFR 1710.501(b)(1). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act.

C. Supplemental Documents for Submission.

1. Pro forma financial statements including cash flow projections and assumptions:

Each applicant must include five-year pro forma income statements, balance sheets and cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

2. Pending litigation statement:

A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

D. Submission Dates and Times:

To be considered, applications must be submitted no later than 5:00 p.m. Eastern Daylight Time (EDT) [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

E. Funding Restrictions

Funds from loans guaranteed under this program may only be used in accordance with this notice, the program regulations and the RE Act.

V. Application Review Information

A. Criteria

Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

B. Review and Section Process.

1. Administrator review.

a. Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b).

2. Decisions by the Administrator.

The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount that was less than requested.

C. Independent Assessment.

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

VI. Issuance of the Guarantee

The requirements under 7 CFR 1720.8 must be met by the applicant prior to the endorsement of a guarantee by the Administrator.

VII. Guarantee Agreement

Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on an annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

VIII. Federal Administration Information

Award Notices. RUS will send a commitment letter to an applicant once the guaranteed loan has been approved. Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB as follows:

1. *Compliance conditions.*

In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

a. Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount at least equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

b. The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Instruments) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Instruments that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles; special mention loans as defined by the Office of the Comptroller of the Currency; or any other elevated risk categories used by the Guaranteed Lender, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30 percent of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5 percent of notes and bonds be from any one particular borrower and (v) cannot be unsecured notes.

c. The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days of the Guaranteed Lender's written request to pledge Pledged Collateral, to reject any of the Pledged Instruments and require the Guaranteed Lender to substitute other Pledged Instruments as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

d. The Guaranteed Lender will be required to agree not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

e. Applicants must certify to the RUS, the portion of their loan portfolio that is:

(1) Refinanced RUS debt;

(2) Debt of borrowers for whom both RUS and the applicants have outstanding loans;

and

(3) Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

2. Compliance with Federal Laws.

Applicants must comply with all applicable Federal laws and regulations.

a. This loan guarantee will be subject to the provisions contained in the appropriations act for FY 2022, once enacted by Congress. Prior appropriations acts have included prohibitions against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies. It is possible that such a provision will be included in the appropriations act for FY 2022.

b. An authorized official within your organization must execute, date, and return the loan commitment letter and the Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD-3031) to RUS within 14 calendar days from the date of the loan commitment letter, or by September 26, 2022, if the loan is approved after September 12, 2022; otherwise, the commitment will be void. This form is available at <https://www.ocio.usda.gov/document/ad3031>.

c. Uniform Commercial Code (UCC) Filing. The Borrower must provide RUS with evidence that the Borrower has filed the UCC financing statement required by 7 CFR 1720.8(a)(2). Upon filing of the appropriate UCC financing statement, the Guaranteed Lender will provide RUS with

a perfection opinion by outside counsel which demonstrates that RUS's security interest in the pledged collateral under the Pledge Agreement is perfected.

d. Additional conditions may be instituted for future obligations.

3. Reporting Requirements

Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

IX. National Environmental Policy Act Certification

For any proceeds to be used to refinance bonds and notes previously issued by the Guaranteed Lender for RE Act purposes that are not obligated for specific projects, RUS has determined that these financial actions will not individually or cumulatively have a significant effect on the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and its implementing regulations at 40 CFR parts 1500-1508. However, for any new projects funded through the 313A Program, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

X. Other Information and Requirements

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), OMB must approve all “collection of information” as a requirement for “answers to ***identical reporting or recordkeeping requirements imposed on ten or more persons *** ” (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this rule/funding announcement will involve less than 10 persons and do not require approval under the provisions of the Act.

Applications must contain all the required elements of this NOSA, and all standard requirements as required by 7 CFR part 1720. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal laws and regulations.

XI. Agency Contacts

A. *Website:* <https://www.rd.usda.gov/contact-us/national-office/rus>.

B. *Phone:* (202) 720-9540.

C. *E-mail:* amy.mcwilliams@usda.gov

D. *Main point of contact:* Amy McWilliams, Program Advisor; Phone: (202) 205-8663.

XII. USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: program.intake@usda.gov

USDA is an equal opportunity provider, employer, and lender.

Authority: 7 U.S.C. 940c-1.

Christopher A. McLean,
Acting Administrator,
Rural Utilities Service.